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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/722,841

11/25/2003

Daniel P. Baumberger

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7590

05/05/2009

INTEL/BSTZ

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EXAMINER

WAI, ERIC CHARLES

ART UNIT

PAPER NUMBER

2195

MAIL DATE

DELIVERY MODE

05/05/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/722,841	Applicant(s) BAUMBERGER, DANIEL P.	
	Examiner ERIC C. WAI	Art Unit 2195	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 21 April 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: None.
- Claim(s) objected to: None.
- Claim(s) rejected: 1-20 and 31-61.
- Claim(s) withdrawn from consideration: None.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/VAN H NGUYEN/
 Primary Examiner, Art Unit 2194

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant argues on pg 19 regarding claims 1-2, and 11-12:

"Thus, while the Examiner previously asserted that 'the internal buffer storage is' in fact a shared physical memory element," (emphasis added), the Examiner now retreats from that position, and instead argues that the internal buffer storage can be interpreted to be a shared physical memory element. Applicant again disagrees, and submits that the Examiner's conclusion is, at best, an impermissible hindsight influenced by knowledge of the Applicant's disclosure, and is not properly based on the prior art."

Examiner disagrees. As previously argued in Final Rejection dated 02/20/2009, the internal buffer storage of Macchiano is used to facilitate transfers between virtual NICs operating on the virtual LAN (col 5 lines 23-25). Since any virtual NIC is permitted to utilize this internal buffer storage, this storage (i.e. memory) is shared amongst the virtual NICs. Such articulated reasoning is properly based on the prior art and is not impermissible hindsight as argued by Applicant.

Applicant argues on pg 21 regarding claims 3-10, 13-20, and 31-61:

"First, the virtual LAN of Macchiano, at best, employs internal buffers, but it is not a buffer itself. Moreover, there is nothing in Macchiano to suggest that the internal buffer storage used in the virtual LAN is made up of direct memory accessible storage. Thus, it is incorrect to say that the use of direct memory access buffers is taught by Macchiano. The most that can be said of Macchiano is that it teaches the use of internal buffer storage in virtual LANs. Accordingly, Applicant submits that Claims 41-47 are patentably distinguishable over the cited and applied art of record, and requests the withdrawal of the rejection of Claims 41-47 for at least this reason."

Examiner disagrees. As previously argued in Final Rejection dated 02/20/2009, as is well known in the art, a direct memory access buffer is still a buffer. Since Macchiano teaches an internal buffer storage used in the virtual LAN as argued above, such a buffer is equivalent to the direct memory access buffer of Applicant's invention. Furthermore, the use of direct memory access buffers is also well known in the art as indicated by Hammer et al. (US Pat No. 4,396,978) col 1 lines 57-63, wherein accessing a buffer memory using direct memory access enables transmission speed to be increased.